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| APPLICATION NO.                                                                                                              | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.             | CONFIRMATION NO.            |
|------------------------------------------------------------------------------------------------------------------------------|-------------|----------------------|---------------------------------|-----------------------------|
| 10/573,933                                                                                                                   | 11/20/2006  | Patricia A. Riley    | 61284-0006                      | 5408                        |
| 24115 7590 06/21/2007<br>BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP<br>3800 EMBASSY PARKWAY<br>SUITE 300<br>AKRON, OH 44333-8332 |             |                      | EXAMINER<br>DAVIS, DEBORAH A    |                             |
|                                                                                                                              |             |                      | ART UNIT<br>1655                | PAPER NUMBER                |
|                                                                                                                              |             |                      | NOTIFICATION DATE<br>06/21/2007 | DELIVERY MODE<br>ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

RLEAR@BDBLAW.COM  
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|                              |                                      |                                           |  |
|------------------------------|--------------------------------------|-------------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/573,933 | <b>Applicant(s)</b><br>RILEY, PATRICIA A. |  |
|                              | <b>Examiner</b><br>Deborah A. Davis  | <b>Art Unit</b><br>1655                   |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                       |                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "the Yellow Lotus", "the Blue Lotus" and "the Sacred Lotus" in step a. There is insufficient antecedent basis for this limitation in the claim.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 and 13-15 of U.S. Patent No. 6,602,526. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are drawn to an oral composition comprising Lotus seed extract with a compatible vehicle for oral application. The extracts are selected from various species of the Lotus plant such as Yellow Lotus, blue Lotus and Sacred Lotus and methyl donors. The extracts further comprises vitamins, minerals, antioxidants, amino acids and hormones.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Patricia A. Riley (US2002/0098253).

An oral or topical composition comprising a. Lotus seed extract, b. Lotus flower extract; and c. a compatible vehicle for oral or topical application and other ingredients therein is apparently claimed.

The reference of Riley anticipates the claims by teaching therapeutic oral and topical compositions of Sacred Lotus Seed (Methyltransferase) in dietary supplements in tablet form, which is a compatible vehicle for oral application. The composition

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combines Sacred Lotus seeds with additional antioxidants such as Vitamin E, and minerals such as copper, Iron and Manganese (paragraph 0072, Example 3 e.g.). One preferred composition combines the Sacred Lotus seed with glucosamine and cysteine (amino acid), plus antioxidants and vitamins A,C,E and other ingredients therein (paragraph 0061 e.g.). Other items include methyl donors one being lecithin, as claimed. Riley discloses that components such as L-isoaspartyl Methyltransferase and dopamine (hormone) are components naturally found in the Sacred Lotus Seed, and other parts of the plant (paragraph 0002 e.g.). The composition includes extracts from the seeds, fruit, pithe, shell, stalk, leaves, roots, stems pollen, carpels oval, and other plant parts. Some varieties of Sacred Lotus used in the dietary supplements include Blue Lotus, Yellow Lotus, and White Lotus (paragraph 0044).

Therefore, the reference is deemed to anticipated.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patricia A. Riley (US2002/0098253).

The reference of Riley beneficially teaches therapeutic oral and topical compositions of Sacred Lotus Seed (Methyltransferase) in dietary supplements in tablet

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form, which is a compatible vehicle for oral application. The composition combines Sacred Lotus seeds with additional antioxidants such as Vitamin E, and minerals such as copper, Iron and Manganese (paragraph 0072, Example 3 e.g.). One preferred composition combines the Sacred Lotus seed with glucosamine and cysteine (amino acid), plus antioxidants and vitamins A,C,E and other ingredients therein (paragraph 0061 e.g.). Other items include methyl donors one being lecithin, as claimed. Riley discloses that components such as L-isoaspartyl Methyltransferase and dopamine (hormone) are components naturally found in the Sacred Lotus Seed, and other parts of the plant (paragraph 0002 e.g.). The composition includes extracts from the seeds, fruit, pithe, shell, stalk, leaves, roots, stems pollen, carpels oval, and other plant parts. Some varieties of Sacred Lotus used in the dietary supplements include Blue Lotus, Yellow Lotus, and White Lotus (paragraph 0044).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare a therapeutic Sacred Lotus Seed extract composition based upon the beneficial teachings provided by the cited reference, as discussed above. The adjustment of particular conventional working conditions is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of

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ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of the evidence to the contrary.

***Conclusion***

No claims are allowed.

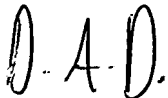
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah A. Davis whose telephone number is (571) 272-0818. The examiner can normally be reached on 8-5 Monday thru Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McKelvey Terry can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Deborah A. Davis  
Patent Examiner  
Art Unit 1655  
May 2007



CHRISTOPHER R. TATE  
PRIMARY EXAMINER